

From: Steve Smith
To: Microsoft ATR
Date: 11/18/01 5:16pm
Subject: Settlement in Microsoft Antitrust Case

Quick opinion: Sucks.

There's an old story about a guy who bought "the world's smartest mule". When he got it home, the mule simply wouldn't do anything. He complained to the guy who sold him the mule, who came out to see what the problem was.

"You said this mule could plow a field practically by himself".

"He can."

"But he won't. He won't do anything".

The seller picked up an ax handle, walked over to the mule and hit it square between the eyes, as hard as he could, and said "plow the north 40". The mule then docilely walked off to do the plowing.

"He'll do anything you tell him. But first you've got to get his attention."

This settlement simply isn't going to get Microsoft's attention. They have engaged in long standing anticompetitive practices, according to the Findings of Fact and the Findings of Law. Indeed, the Microsoft corporate culture holds that Microsoft's way of doing anything is automatically The Right Way, and that no other software companies have any right to exist. This is going to be very difficult to change, if it's possible at all.

It does not address the fundamental problem that got Microsoft into this mess in the first place -- abuse of its monopoly position in both operating system software and office desktop applications. Indeed, it is difficult to see **any** effective change in Microsoft's more obnoxious business practices:

- * Tying Windows licensing fees to **total** computer production instead of computers with Microsoft Windows installed. Whether you use it or not, you still pay for it.

- * "Hijacking" open standards by extending them in Microsoft-proprietary directions and ensuring that their software will work only with the extended versions.

- * Keeping competitors' software from interoperating by using rapidly shifting, proprietary data formats. The settlement briefly touches on

APIs and communications protocols; however, it does so only in the context of licensed software. This allows Microsoft to effectively outlaw open- source alternatives to its own programs. (Open source projects can't pay licensing fees, and reverse engineering has been effectively outlawed by the DMCA.)

* Spreading "fear, uncertainty, and doubt" about competing products.
"WARNING: YOU ARE ABOUT TO ALTER A VITAL SYSTEM FUNCTION. YOUR COMPUTER MAY NOT OPERATE PROPERLY IF YOU PROCEED. PROCEED? YES/NO"
(Remember the DR DOS case? Nobody else does, either.)

* And the one that started the fuss, adding new application- level functions into the OS, specifically to run the competition out of business.

Even the sections that prohibit "retaliation" do so only in terms of pricing. Nothing prevents Microsoft from, say, refusing to provide technical support for any computer set up for "dual boot". The settlement's definition of "pricing" is also slippery; it specifically allows kickbacks (sect. 3, last paragraph of subsection A.)

Another problem is that the settlement specifies no specific penalties for noncompliance. What will happen if Microsoft completely ignores the settlement? Nothing that I can see, except that it will run two more years (??!) Yeah, "such other relief as the Court may deem appropriate." Given that there are absolutely no penalties for the original violations (except for this powder-puff settlement and a bit of bad publicity), I can confidently state that there won't be any penalties.

What would be a penalty?

- * Corporate officers thrown in jail for contempt.
- * Fines significant for a company with more than \$10 billion in cash reserves.
- * Public release of "proprietary" interface code and data formats.
- * Blocking releases, or withdrawal of products.

During the 2000 election, I heard the confidant prediction from a number of quarters, both pro and anti Microsoft, that, if Bush were elected, the Microsoft case would be thrown out. Looks like they were right.

As an aside, one hopeful sign is that the settlement is being published in WordPerfect format. Perhaps the Department of Justice is rethinking the U. S. Government's status as a Microsoft-only shop?

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"Truth is stranger than fiction because fiction has to make sense."